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BARRY I. LEVY
PARTNER
(516) 357-3149
barry.levy@rivkin.com

By ECF

Honorable Roanne L. Mann
United States Magistrate-Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: Allstate Ins. Company v. Vivianne Etienne, et al.
Docket No. CV 09-3582 (SLT)(RLM)

Dear Magistrate Judge Mann:

As Your Honor is aware, we are counsel to the Plaintiff, Allstate Insurance Company ("Plaintiff") in this matter.

I write on behalf of Allstate to respectfully renew its request that the Court issue an order pursuant to Fed. R. Civ. Proc. 37, striking the Answer of Defendant, Marat Tsirlin, M.D. ("Dr. Tsirlin") based on his failure to produce documents and interrogatory responses. As the Court is aware, on March 22, 2011, Allstate filed its original application which resulted in a telephone hearing on March 24, 2011 and an order stating as follows:

Minute Order. for proceedings held before Magistrate Judge Roanne L. Mann: granting in part and denying in part [206] Motion to Strike ; Telephone Conference/Discovery Hearing held on 3/24/2011. Counsel shall confer and, by tomorrow, file a joint schedule for depositions. Plaintiff's motion to strike the defendants' answer or preclude evidence is denied at this time. (Maynard, Pat) See Docket Entry 208.

As a result of that minute order, a stipulation was submitted on March 25, 2011 and So-Ordered requiring Dr. Tsirlin to (i) produce documents and interrogatory responses by 5:00 p.m. on April 1, 2011, and (ii) appear for a deposition at 11:30 a.m. on April 5, 2011. (the "Order") See Docket Entry 211.

Not surprisingly, Dr. Tsirlin has not complied with the Order. We were advised during the week of March 28, 2011 that Dr. Tsirlin intended to settle the matter with Allstate, and that the settlement would obviate the need for compliance. A settlement proposal was made to Dr. Tsirlin that week, and he has not

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Dr. Tsirlin is directed to show cause, in writing, by April 14, 2011, why the relief requested should not be granted, in light of his violation of this Court's Order of March 28, 2011 (docket entry #211).

SO ORDERED:

/s/
Roanne L. Mann
U.S. Magistrate Judge
Dated: 4/11/11

926 RXR Plaza
Uniondale, NY
11556-0926
Tel: 516.357.3000
Fax: 516.357.3333

555 Madison Avenue
New York, NY
10022-3338
Tel: 212.455.9555
Fax: 212.687.9044

21 Main Street • Court Plaza South
West Wing • Suite 158
Hackensack, NJ 07601-7021
Tel: 201.287.2460
Fax: 201.489.0495



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responded, nor made any form of a meaningful counterproposal – he has also made no effort to comply with the Order.

These most recent events are nothing more than a continuation of Dr. Tsirlin's pattern of violative behavior that has been exhibited throughout the course of this litigation. It is suggested that any form of further tolerance by this Court is no longer warranted, and that an order striking Dr. Tsirlin's answer should be granted.

The Court's attention to this application is appreciated.

Respectfully submitted,

RIVKIN RADLER LLP

Barry I. Levy

Barry I. Levy (BL 2190)

cc: All counsel via ECF